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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE WESTERN DISTRICT OF WASHINGTON**

9 **RICHARD MADISON AND GUY**
10 **MADISON,**

11 Plaintiffs,

12 v.

13 **BUREAU OF INDIAN AFFAIRS,**
14 **ALASKA REGIONAL OFFICE,**

15 Defendant.

Civil Action No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

16 **INTRODUCTION**

17 1. In this action, brought pursuant to the Freedom of Information Act (“FOIA” or
18 “the Act”), 5 U.S.C. § 552, Plaintiffs challenge the unlawful acts of the Bureau of Indian Affairs,
19 Alaska Regional Office (“BIA”) in relation to Plaintiffs’ pending request for government
20 records.

21 2. At issue in this case is BIA’s unreasonable delay in responding to Plaintiffs’
22 October 20, 2020 FOIA request seeking information regarding Plaintiffs’ familial records which
23 are time-sensitive and of great significance to Plaintiffs. Specifically, Plaintiffs seek records
relating to their great-grandmother, Katie George Madison, and her sister, Fannie George, and

1 their respective descendants. Plaintiffs made this request to gain important information related
 2 to the tribal enrollment, identification, and lineage of their family members. Plaintiffs are elderly
 3 and seek to obtain this information to share with their children and community.

4 3. BIA has yet to make a final determination as to Plaintiffs' FOIA request.

5 4. BIA's inaction in this matter violates FOIA in three ways. First, BIA failed to
 6 make a timely determination regarding Plaintiffs' FOIA request. Second, despite repeated
 7 requests made by Plaintiffs, BIA failed to provide Plaintiffs with an estimated date upon on
 8 which BIA would produce the documents requested. Third, BIA has failed to conduct a
 9 reasonable search or produce any of the records requested by Plaintiffs.

10 5. These failures amount to illegal, constructive withholding of records responsive
 11 to Plaintiffs' FOIA request.

12 6. Each of these failures violates FOIA or, in the alternative, the APA.

13 7. Plaintiffs are working to understand their Native Alaskan lineage, the life of their
 14 ancestors, and the stories associated with their family members. Due to a long and painful history
 15 of the United States' control over the lives of Native Americans and Native Alaskans, including
 16 Plaintiffs and their ancestors, BIA is uniquely situated to have possession of Plaintiffs' family
 17 records. BIA's failure to provide Plaintiffs with their family records frustrates their goal of
 18 understanding their family's history.

19 8. Plaintiffs seek a declaration from this Court that BIA has violated FOIA or, in the
 20 alternative, the APA. Plaintiffs also seek an injunction from this Court directing BIA to provide
 21 them with the requested records by a date certain.

1 16. Guy Madison is currently undergoing treatment for cancer, an illness believed to
2 be tied to his service in the Vietnam War, and thus, for the Madisons, the timeliness of these
3 records is ever important.

4 17. The Madisons have been working to understand the tribal enrollment, lineage,
5 and lives of their ancestors, specifically their great-grandmother, Katie George Madison¹, and
6 her sister, Fannie George.

7 18. It is the Madisons' understanding that Katie and Fannie were Native Alaskans
8 who lived the entirety of their lives in an Alaskan Native village. Katie's children were relocated
9 to Western Washington in large part due to forced enrollment in Indian boarding schools. The
10 Madisons were similarly forced to attend Indian boarding schools far away from their home
11 much like their grandparent's experience. Therefore, understanding this traumatic history and
12 the lives and tribal affiliation of their relatives is important to the Madisons for a multitude of
13 personal reasons. The Madisons hope that documents related to their great-grandmother, and her
14 sister, may illuminate information about other family members' lives. Most importantly, for
15 cultural and spiritual reasons, the Madisons are working to understand the clan identity of their
16 great-grandmother, and her sister, and what cultural motifs were associated with the clan.

17 19. The Madisons, as the current eldest generation in their family, believe it is their
18 responsibility to learn about their ancestors and pass this information down to the younger
19 generations. For the Madisons, and their family, it is crucial that the Madisons promptly gain
20 insight into their great-grandmother's, and her sister's, lives so the Madisons have the time to
21 explore these records with other living family members.

22
23 ¹ The Madisons do not know if Katie George Madison took the married name Madison. Therefore, for
clarity and out of respect, she will be referred to as "Katie" throughout this filing.

1 scope of the documents that the agency plans to withhold under any FOIA exemptions.”
 2 *Washington*, No. 2:21-CV-00566-TL, 2022 WL 823548, at *3 (quoting *Citizens for Resp. &*
 3 *Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d 180, 186 (D.C. Cir. 2013)) (internal
 4 quotations omitted). In the alternative, the agency shall “notify the requestor of any unusual
 5 circumstances requiring an extension in responding to the request.” *Hajro v. U.S. Citizenship*
 6 *and Immigration Services*, 811 F.3d 1086, 1092 (9th Cir. 2016) (citing 5 U.S.C. §§ 552(a)(6)(A);
 7 552(a)(6)(B)) (internal quotations omitted).

8 25. Where “unusual circumstances exist” the agency may request an extension of the
 9 time limit “by no more than 10 business days” via a written request. 5 U.S.C. § 552(a)(6)(B)(i);
 10 *Citizens for Resp. & Ethics in Washington*, 711 F.3d at 189 (“[A]n agency can extend that 20–
 11 working–day timeline to 30 working days if unusual circumstances delay the agency's ability to
 12 search for, collect, examine, and consult about the responsive documents.”). The deadline for a
 13 determination may be extended by “written notice to the person making such request setting
 14 forth the unusual circumstances for such extension and the date on which a determination is
 15 expected to be dispatched.” 5 U.S.C. § 552(a)(6)(B)(i). The agency must demonstrate that it
 16 conducted a good faith effort and exercised due diligence in processing the request on a first-in
 17 first-out basis. *Kuffel v. U.S. Bureau of Prisons*, 882 F. Supp. 1116, 1127 (D.D.C. 1995) (citing
 18 *Open Am. v. Watergate Special Prosecution Force*, 547 F.2d 605, 616 (D.C. Cir. 1976)).

19 26. Under FOIA, “unusual circumstances may mean . . . the need to search for and
 20 collect the request records from field facilities or other establishments that are separate from the
 21 office processing the request.” 5 U.S.C. § 552(a)(6)(B)(iii)(I). Though the term “unusual
 22 circumstances” may include the delays related to the COVID-19 pandemic, the term does not
 23 include delays that result from the agency’s predictable workload related to FOIA requests. *See*,

1 *e.g., Moore v. U.S. Immigr. & Customs Enft.*, No. EP-19-CV-00279-DCG, 2020 WL 8125553,
 2 at *3 (W.D. Tex. Aug. 10, 2020) (finding the delays presented by the COVID-19 pandemic
 3 constitute “exceptional circumstances”); 5 U.S.C. § 552(a)(6)(C)(ii). Notably, unusual
 4 circumstances do not afford an agency the opportunity to indefinitely delay the production of a
 5 determination to a requestor. 5 U.S.C. § 552(a)(6)(C)(ii); *see also Lacy v. United States*, No. SA
 6 CV-22-1065-DOC, 2023 WL 4317659, at *15 (C.D. Cal. May 3, 2023) (“Courts in the Ninth
 7 Circuit have generally enforced FOIA’s time limits when the violation is egregious . . . [and]
 8 months-long delays have been held to rise to the level of egregious violations.”) (internal
 9 quotations omitted). Therefore, the “burden [is] on the agency, not the FOIA requester, to justify
 10 the delays in processing.” *Lacy*, 2023 WL 4317659 at *15 (quoting 5 U.S.C. § 552(a)(4)(B)).

11 27. A FOIA requester shall “have exhausted his administrative remedies with respect
 12 to such request if the agency fails to comply with the applicable time limit” and the requestor
 13 may “seek immediate judicial review of the agency’s processing of the request.” 5 U.S.C. §
 14 552(a)(6)(C)(i); *Baker v. Consumer Fin. Prot. Bureau*, No. CV 18-2403(CKK), 2018 WL
 15 5723146, at *3 (D.D.C. Nov. 1, 2018). If an “agency does not adhere to FOIA’s explicit
 16 timelines, the ‘penalty’ is that the agency cannot rely on the administrative exhaustion
 17 requirement to keep cases from getting into court.” *Citizens for Resp. & Ethics in Washington*,
 18 711 F.3d at 189–90. In fact, “[a]n agency’s failure to comply with the FOIA’s time limits is, by
 19 itself, a violation of FOIA.” *Gilmore v. U.S. Dep’t of Energy*, 33 F. Supp. 2d 1184, 1187 (N.D.
 20 Cal. 1998).

21 28. “As the enforcement arm of the FOIA, the courts are charged with the
 22 responsibility of ensuring the fullest responsible disclosure.” *Long v. U.S. I.R.S.*, 693 F.2d 907,
 23 909 (9th Cir. 1982). Courts have found that entering declaratory judgment that the agency

1 violated the FOIA is appropriate when the agency has violated the time limits in responding to
 2 a particular set of requests, the agency's violations are consistent, and they may recur. *Nat'l Pub.*
 3 *Radio, Inc. v. U.S. Cent. Command*, 646 F. Supp. 3d 1245, 1257 (S.D. Cal. 2022) (citing *Our*
 4 *Children's Earth Found. v. Nat'l Marine Fisheries Serv.*, 85 F. Supp. 3d 1074, 1089 (N.D. Cal.
 5 2015)). The Court may also order production of the requested documents. “In utilizing its
 6 equitable powers to enforce the provisions of the FOIA, the district court may consider injunctive
 7 relief where appropriate.” *See also Long*, 693 F.2d at 909 (“In utilizing its equitable powers to
 8 enforce the provisions of the FOIA, the district court may consider injunctive relief where
 9 appropriate.”).

10 **FACTUAL BACKGROUND**

11 29. On October 20, 2020, the Madisons’ attorney, on their behalf, electronically
 12 submitted a FOIA request to BIA requesting all records from the agency related to the following:

- 13 (1) “Katie George, whose married name was Katie Madison; (2) Katie George’s
 14 sister, Fannie; and (3) Katie and Fannie’s relatives and descendants. Katie
 15 George was the great-grandmother [of the Madisons].”

16 *See* Exhibit 1 (December 3, 2020, Letter from Eugene R. Pelota, Jr., Regional Director
 17 of the Bureau of Indian Affairs, Alaska Region).

18 30. In their initial request, the Madisons provided additional information to assist
 19 BIA in their search for the requested records. This additional information included: timeline
 20 details of Katie George Madison’s life and her relatives’ lives, a photograph of Katie and Fannie,
 21 a photograph of Katie’s son, and a 1910 newspaper article about Katie written by her daughter.
 22
 23

1 31. On December 3, 2020, the Madisons received a letter from Eugene R. Pelota, Jr.,
 2 Regional Director of BIA. This letter informed the Madisons that BIA had received their request
 3 on October 30, 2020, and assigned the request the control number BIA-2021-00319. Director
 4 Pelota informed the Madisons they could “expect to hear from the [BIA] promptly regarding the
 5 outcome of this search.” *See* Exhibit 1.

6 32. On December 31, 2020, the Madisons received a letter from Director Pelota
 7 stating BIA was unable to respond to the Madisons’ request “as the National Archives and
 8 Records Administration (NARA) and the American Indian Records Repository (AIRR) is closed
 9 due to the Covid-19 global health pandemic. As soon as AIRR opens again, this request will be
 10 processed.” *See* Exhibit 2 (December 31, 2020, Letter from Eugene R. Pelota, Jr., Regional
 11 Director of the Bureau of Indian Affairs, Alaska Region). The letter did not request an extension,
 12 nor did it inform the Madisons of when they could expect a determination on their request.

13 33. On September 15, 2022, the Safer Federal Workforce Task Force Model Agency
 14 COVID-19 Safety Principles established updated principles addressing vaccination, mask
 15 wearing, community health risk, and other measures addressing in-office work by Federal
 16 employees.²

17 34. On September 18, 2022, in an interview with the news organization CNN,
 18 President Biden publicly declared the COVID-19 pandemic over.³

19 35. On information and belief, by the end of 2022 many Federal employees had
 20 returned to the office at least part-time.

21
 22 ²*Safer Federal Workforce Task Force Model Agency COVID-19 Safety Principles* (September 15, 2022),
https://www.saferfederalworkforce.gov/downloads/SFWTF_model%20agency%20safety%20principles_20220915.pdf.

23 ³ Kate Sullivan, et. al, *Biden: ‘The Pandemic is Over,’* CNN (September 18, 2022),
<https://www.cnn.com/2022/09/18/politics/biden-pandemic-60-minutes/index.html>.

1 36. On February 10, 2023, the Madisons' attorney emailed Sarah J. Walker, the
2 Supervisory Tribal Operations Specialist at BIA, to seek information on the Madisons'
3 outstanding request. *See* Exhibit 3 (February 10, 2023, Email Correspondence from Wyatt
4 Golding to Sarah J. Walker, Bureau of Indian Affairs, Supervisory Tribal Operations Specialist).

5 37. On February 13, 2023, Sarah J. Walker responded, via email, stating "it is our
6 understanding that Archives is working on requests in the order they are received—from the
7 beginning of their closure. Once the file(s) are received, they will be routed to the requestor."
8 *See* Exhibit 4 (February 13, 2023, Email Correspondence from Sarah J. Walker, Bureau of
9 Indian Affairs, Supervisory Tribal Operations Specialist).

10 38. On the same day as Ms. Walker's email, the Madisons' attorney responded
11 thanking Ms. Walker for her response and requested to be updated on any timeline information.
12 *See* Exhibit 5 (February 13, 2023, Email Correspondence between Sarah J. Walker and Wyatt
13 Golding). Having received no response, on May 30, 2023, the Madisons' attorney responded to
14 Sarah J. Walker via email requesting an update on the status of the request. *See* Exhibit 6 (May
15 30, 2023, Email Correspondence from Wyatt Golding to Sarah J. Walker).

16 39. On April 12, 2023, the Madisons, through their attorney, requested that BIA
17 provide a firm deadline of when the Madisons could expect a determination on their request. *See*
18 Exhibit 7 (April 12, 2023, Letter from Wyatt Golding to Sarah Walker, Bureau of Indian Affairs,
19 Supervisory Tribal Operations Specialist).

20 40. On July 28, 2023, having received no further correspondence from BIA, the
21 Madisons' attorney again sent a letter to BIA requesting an update and reiterating the request for
22 a firm deadline as to the determination of the FOIA request. *See* Exhibit 8 (July 28, 2023, Letter
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1 from Wyatt Golding to Sarah Walker, Bureau of Indian Affairs, Supervisory Tribal Operations
2 Specialist).

3 41. On August 7, 2023, the Madisons' attorney emailed Melissa Thaisz, Attorney
4 Advisor for the Department of the Interior, Office of the Solicitor, requesting an update on the
5 Madisons' FOIA request, specifically a timeline for a response to their request, and attached the
6 July 28, 2023 letter. *See* Exhibit 9 (August 7, 2023 Email from Wyatt Golding to Melissa
7 Thaisz). Neither the Madisons, nor their attorney, received a response.

8 42. As of the date of this filing, which is approximately 1,140 days beyond the
9 permitted twenty-day deadline, the Madisons have yet to receive a determination from BIA on
10 whether their request will be completed.

11 43. Unlike other plaintiffs similarly aggrieved by the delay in FOIA requests due to
12 the COVID-19 pandemic, the Madisons have not received a determination deadline or an update
13 that the BIA is working to locate the requested records. *See, e.g., New York Times Co. v. Def.*
14 *Health Agency*, No. 21-CV-566 (BAH), 2021 WL 1614817, at *7 (D.D.C. Apr. 25, 2021) (where
15 the court found the agency had taken steps to rectify the pandemic-related delays by providing
16 an anticipated completion date and had explained the search for records had been initiated).

17 44. While Plaintiffs acknowledge that the COVID-19 pandemic disrupted
18 government functions, more than a year has passed since Federal employees returned to in-office
19 work, and the overall more than three-year delay in responding to Plaintiffs' FOIA request is
20 manifestly unreasonable.

21 45. The Madisons continue to be harmed by having to wait over three years for their
22 FOIA request to be processed.

23 CLAIMS FOR RELIEF

Claim I: Violation of the Freedom of Information Act: Determination Deadline**Violations**

46. The Madisons hereby incorporate by reference the allegations in the preceding paragraphs.

47. FOIA requires agencies to provide a determination on whether they will comply with a request for documentation within twenty days, or thirty days if unusual circumstances exist. 5 U.S.C. §§ 552(a)(6)(A)(i); 552(a)(6)(B)(i). This determination must be made in writing and contain a date upon which production of the documents is expected to be made. 5 U.S.C. § 552(a)(6)(B)(i).

48. Approximately twenty-nine working days after their request was submitted, the Madisons were first informed by BIA that their request had been received and a response would be forthcoming. This letter was not a determination on the Madisons' request. Twenty days later, the Madisons were informed their request would not be processed due to the COVID -19 pandemic. BIA did not provide a date upon which a determination would be made, nor did BIA inform the Madisons of a deadline to expect the production of the documents requested.

49. Unless enjoined and made subject to a declaration of the Madisons' legal rights by this Court, BIA will continue to violate the Madisons' rights, under FOIA, to receive a determination on their public records request.

50. The Plaintiffs are entitled to reasonable costs of litigation and attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

Claim II: Violation of the Freedom of Information Act; Failure to Provide an Estimated Date on Which Defendant Will Complete Action on Plaintiffs' FOIA request.

1 51. Plaintiffs hereby incorporate by reference all the allegations in preceding
2 paragraphs.

3 52. The Madisons have a statutory right to have BIA process and respond to its FOIA
4 requests in a timely manner as set forth under FOIA. BIA continues to violate the Madisons'
5 rights under FOIA so long as BIA refuses to make a determination on the Madisons' request and
6 propose a deadline upon which the requested documents will be released. 5 U.S.C. §
7 552(a)(6)(A)(i).

8 53. Over the past three years, the Madisons, through their legal counsel, have
9 repeatedly asked BIA for the date upon which BIA would complete action on their FOIA request.

10 54. BIA failed to provide an estimated date by which it would complete action on the
11 Madisons' FOIA request.

12 55. BIA has violated, and continues to violate, FOIA by failing to provide an
13 estimated date of completion of the Madisons' FOIA request.

14 56. The Madisons' rights will continue to be adversely affected if BIA is allowed to
15 continue to circumvent the statutory deadlines provided for in FOIA.

16 57. Unless enjoined and made subject to a declaration of the Madisons' legal rights
17 by this Court, BIA will continue to violate the Madisons' right to have their information requests
18 processed as required by FOIA.

19 58. The Madisons are entitled to reasonable costs of litigation, including attorney fees
20 pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

21 **Claim III: Violation of Freedom of Information Act; Unlawful, Constructive Denial of**
22 **FOIA Request and Withholding of Information**
23

59. The Madisons hereby incorporate by reference all the allegations in the preceding paragraphs.

60. The Madisons have a statutory right to the records they seek and there is no legal basis for BIA to assert that any of FOIA's nine disclosure exemptions apply to the requested records. *See* 5 U.S.C. § 552(b)(1)-(9).

61. BIA violated the Madisons' rights under FOIA by failing to comply with the statutory mandated decision deadlines and by failing to make a determination on the Madisons' request.

62. The Madisons' initial FOIA request was made over three years ago and they have yet to receive a determination, nonetheless an actual production of documents.

63. By failing to properly respond to the Madisons' request, BIA is unlawfully withholding public disclosure of records for which no valid disclosure exemption applies.

64. Unless enjoined and made subject to a declaration of the Madisons' legal rights by this Court, BIA will continue to violate the rights of the Madisons by withholding documents.

65. The Madisons are entitled to reasonable costs of litigation, including attorneys' fees and costs pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

PRAYER FOR RELIEF

WHEREFORE, the Madisons respectfully request that this Court:

1. Adjudge and declare that BIA has violated FOIA for the reasons set forth above;
2. Order BIA to comply immediately with FOIA by providing the Madisons all non-exempt public records subject to the Madisons' FOIA request and a Vaughn Index as appropriate;

1 3. Award the Madisons reasonable attorneys' fees and litigation costs pursuant to 5
2 U.S.C. § 552(a)(4)(E); and

3 4. Grant such further and additional relief as this Court may deem just and proper.
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5 DATED: January 4, 2024.

6 Respectfully Submitted,

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